

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1330

Introduced by Senator Simitian

February 23, 2012

~~An act to add Sections 2413.5 and 2413.7 to the Vehicle Code, relating to vehicles. An act to add Title 1.81.23 (commencing with Section 1798.90.5) to Part 4 of Division 3 of the Civil Code, relating to personal information.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Simitian. ~~Vehicles: license plate recognition technology: personal information. License plate recognition technology: use of personal information.~~

~~(1) Existing~~

Existing law authorizes the Department of the California Highway Patrol to retain license plate data captured by license plate recognition (LPR) technology for not more than 60 days unless the data is being used as evidence or for the investigation of felonies. Existing law prohibits the department from selling the data or from making the data available to an agency that is not a law enforcement agency or an individual that is not a law enforcement officer.

Existing law authorizes the department to use LPR data for the purpose of locating vehicles or persons reasonably suspected of being involved in the commission of a public offense and requires the department to monitor the internal use of the data to prevent unauthorized use and to submit to the Legislature, as a part of the annual automobile theft report, information on the department's LPR practices and usage.

~~This bill would apply similar requirements to state and local law enforcement agencies other than the Department of the California Highway Patrol and would require these agencies to comply with the requirements of these provisions, thereby imposing a state-mandated program by requiring local agencies to perform new duties.~~

~~This bill would also apply similar requirements to persons, as defined, who use LPR technology and would additionally require, among other things, *compliance with all applicable statutory and constitutional requirements, and disclosure to a law enforcement agency; only pursuant to a search warrant, except as specified.* The bill would require a law enforcement agency that obtains data pursuant to ~~the~~ a search warrant to notify the person whose information is disclosed that his or her records have been obtained. The bill would authorize a person whose information is sold or disclosed in violation of these provisions to bring a civil action and would entitle the person to recover any and all consequential and incidental damages, including all costs and attorney's fees.~~

~~Because the failure to comply with these provisions would constitute an infraction under the Vehicle Code, the bill would also impose a state-mandated local program, by creating a new crime.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Title 1.81.23 (commencing with Section 1798.90.5)
- 2 is added to Part 4 of Division 3 of the Civil Code, to read:

1 **TITLE 1.81.23. CONFIDENTIALITY OF LICENSE PLATE**
2 **INFORMATION**

3
4 1798.90.5. (a) *A person, other than a state and local law*
5 *enforcement agency, shall comply with all applicable statutory*
6 *and constitutional requirements and subdivision (b) when using*
7 *license plate recognition (LPR) technology. As used in this section,*
8 *a “person” has the same meaning as defined in Section 470 of the*
9 *Vehicle code.*

10 (b) *A person who uses LPR technology shall comply with all of*
11 *the following:*

12 (1) *The person shall retain license plate data captured by LPR*
13 *technology for not more than 60 days.*

14 (2) *The person shall not sell LPR data for any purpose and shall*
15 *not make the data available to an agency or person that is not a*
16 *law enforcement agency or an individual who is not a law*
17 *enforcement officer.*

18 (3) *Except as provided in paragraph (4), the person shall make*
19 *data available to a law enforcement agency only pursuant to a*
20 *search warrant. Absent a provision in the search warrant to the*
21 *contrary, the law enforcement agency shall immediately, but in*
22 *any event within no more than five days, notify the person whose*
23 *information has been disclosed that his or her records have been*
24 *obtained and shall provide that person with a copy of the search*
25 *warrant and the identity of the law enforcement agency or law*
26 *enforcement officer to whom the records were provided.*

27 (4) *The person shall allow a peace officer, as defined in Section*
28 *830.1 or 830.2 of the Penal Code, when conducting a criminal or*
29 *traffic collision investigation, to obtain personally identifiable*
30 *information of a person if the officer has good cause to believe*
31 *that a delay in obtaining this information by seeking a search*
32 *warrant would cause an adverse result as defined in paragraph*
33 *(2) of subdivision (a) of Section 1524.2 of the Penal Code.*

34 (5) *The person shall monitor the internal use of LPR data to*
35 *prevent its unauthorized use.*

36 (6) *The person shall adopt a privacy policy to ensure that*
37 *personally identifiable information is not unlawfully disclosed.*

38 (7) *The person shall conspicuously post the privacy policy on*
39 *its Internet Web site.*

1 (8) *The person shall report annually its LPR practices and*
2 *usage, including the number of LPR data disclosures, a record of*
3 *the law enforcement agencies or peace officers to which data was*
4 *disclosed and for what purpose, and any changes in policy that*
5 *affect privacy concerns, to the Department of Justice.*

6 (c) *A person whose information is sold or disclosed in violation*
7 *of this section may bring a civil action and shall be entitled to*
8 *recover any and all consequential and incidental damages,*
9 *including all costs and attorney's fees.*

10 ~~SECTION 1. Section 2413.5 is added to the Vehicle Code, to~~
11 ~~read:~~

12 ~~2413.5. (a) (1) The Legislature finds and declares that state~~
13 ~~and local law enforcement agencies, in addition to the Department~~
14 ~~of the California Highway Patrol, have established vehicle theft~~
15 ~~prevention, investigation, and apprehension programs. State and~~
16 ~~local law enforcement agencies assist that department and federal~~
17 ~~law enforcement agencies by participating in multijurisdictional~~
18 ~~vehicle theft investigations and by establishing programs to~~
19 ~~improve the ability of law enforcement to combat vehicle theft.~~

20 ~~(2) Except as provided in subdivision (c), a state or local law~~
21 ~~enforcement agency may only use license plate recognition (LPR)~~
22 ~~technology when its use complies with the requirements of~~
23 ~~subdivision (b).~~

24 ~~(b) A state or local law enforcement agency that uses LPR~~
25 ~~technology shall comply with all of the following:~~

26 ~~(1) It shall retain license plate data captured by LPR technology~~
27 ~~for not more than 60 days, except in circumstances when the data~~
28 ~~is being used as evidence or for all felonies being investigated,~~
29 ~~including, but not limited to, auto theft, homicides, kidnaping,~~
30 ~~burglaries, elder and juvenile abductions, Amber Alerts, and Blue~~
31 ~~Alerts.~~

32 ~~(2) It shall not sell LPR data for any purpose and it shall not~~
33 ~~make the data available to an agency or person that is not a law~~
34 ~~enforcement agency or an individual who is not a law enforcement~~
35 ~~officer. The data may be used by a law enforcement agency only~~
36 ~~for purposes of locating vehicles or persons when either is~~
37 ~~reasonably suspected of being involved in the commission of a~~
38 ~~public offense.~~

39 ~~(3) It shall monitor the internal use of LPR data to prevent its~~
40 ~~unauthorized use.~~

1 ~~(4) It shall adopt a privacy policy to ensure that personally~~
2 ~~identifiable information is not unlawfully disclosed.~~

3 ~~(5) It shall conspicuously post the privacy policy on the agency's~~
4 ~~Internet Web site.~~

5 ~~(6) It shall report annually its LPR practices and usage, including~~
6 ~~the number of LPR data disclosures, a record of the agencies to~~
7 ~~which data was disclosed and for what purpose, and any changes~~
8 ~~in policy that affect privacy concerns to the state or local agency~~
9 ~~that governs the law enforcement agency.~~

10 ~~(e) This section applies to all state and local law enforcement~~
11 ~~agencies, other than the Department of the California Highway~~
12 ~~Patrol, which is subject to Section 2413.~~

13 ~~SEC. 2. Section 2413.7 is added to the Vehicle Code, to read:~~

14 ~~2413.7. (a) A person, other than a state and local law~~
15 ~~enforcement agency, shall comply with subdivision (b) when using~~
16 ~~license plate recognition (LPR) technology. As used in this section,~~
17 ~~a "person" has the same meaning as defined in Section 470.~~

18 ~~(b) A person who uses LPR technology shall comply with all~~
19 ~~of the following:~~

20 ~~(1) The person shall retain license plate data captured by LPR~~
21 ~~technology for not more than 60 days.~~

22 ~~(2) The person shall not sell LPR data for any purpose and shall~~
23 ~~not make the data available to an agency or person that is not a~~
24 ~~law enforcement agency or an individual who is not a law~~
25 ~~enforcement officer.~~

26 ~~(3) Except as provided in subparagraph (4), the person shall~~
27 ~~make data available to a law enforcement agency only pursuant~~
28 ~~to a search warrant. Absent a provision in the search warrant to~~
29 ~~the contrary, the law enforcement agency shall immediately, but~~
30 ~~in any event within no more than five days, notify the person whose~~
31 ~~information has been disclosed that his or her records have been~~
32 ~~obtained and shall provide that person with a copy of the search~~
33 ~~warrant and the identity of the law enforcement agency or law~~
34 ~~enforcement officer to whom the records were provided.~~

35 ~~(4) The person shall allow a peace officer, as defined in Section~~
36 ~~830.1 or 830.2 of the Penal Code, when conducting a criminal or~~
37 ~~traffic collision investigation, to obtain personally identifiable~~
38 ~~information of a person if the officer has good cause to believe~~
39 ~~that a delay in obtaining this information by seeking a search~~

1 warrant would cause an adverse result as defined in paragraph (2)
2 of subdivision (a) of Section 1524.2 of the Penal Code.

3 ~~(5) The person shall monitor the internal use of LPR data to~~
4 ~~prevent its unauthorized use.~~

5 ~~(6) The person shall adopt a privacy policy to ensure that~~
6 ~~personally identifiable information is not unlawfully disclosed.~~

7 ~~(7) The person shall conspicuously post the privacy policy on~~
8 ~~its Internet Web site.~~

9 ~~(8) The person shall report annually its LPR practices and usage,~~
10 ~~including the number of LPR data disclosures, a record of the law~~
11 ~~enforcement agencies or peace officers to which data was disclosed~~
12 ~~and for what purpose, and any changes in policy that affect privacy~~
13 ~~concerns to the Department of Justice.~~

14 ~~(e) A person whose information is sold or disclosed in violation~~
15 ~~of this section may bring a civil action and shall be entitled to~~
16 ~~recover any and all consequential and incidental damages,~~
17 ~~including all costs and attorney's fees.~~

18 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
19 ~~Section 6 of Article XIII B of the California Constitution for certain~~
20 ~~costs that may be incurred by a local agency or school district~~
21 ~~because, in that regard, this act creates a new crime or infraction,~~
22 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
23 ~~or infraction, within the meaning of Section 17556 of the~~
24 ~~Government Code, or changes the definition of a crime within the~~
25 ~~meaning of Section 6 of Article XIII B of the California~~
26 ~~Constitution.~~

27 ~~However, if the Commission on State Mandates determines that~~
28 ~~this act contains other costs mandated by the state, reimbursement~~
29 ~~to local agencies and school districts for those costs shall be made~~
30 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
31 ~~4 of Title 2 of the Government Code.~~